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EPA lawyer promises public session amid 'rest of river' mediation

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By Larry Parnass, The Berkshire Eagle

LENOX — Berkshires residents will learn soon when they can comment on how the next Housatonic River cleanup should proceed, keeping a public channel open as key players sign agreements not to detail a fledgling mediation effort.

The steps come two years after the Environmental Protection Agency outlined steps the General Electric Co. must take to remove PCBs, or polychlorinated biphenyls, from sections of the river south of its former manufacturing plants in Pittsfield. PCBs are a suspected carcinogen the company released for years until the substance was banned in 1979.

Timothy Conway, a Boston-based EPA lawyer, told members of the Citizens Coordinating Council on Wednesday night that he would identify a date for a public gathering by next week. Conway's promise followed sharp comments from several members of the council who questioned the purpose of the mediation and assailed its secrecy.

"It sounds pretty nebulous and mysterious to me," said Benno Friedman, a Sheffield resident who sits on the council. "I can't imagine what was missing and what more can be done to delineate the steps to be taken now."

The mediation process is only now getting underway, after months spent shaping a nondisclosure agreement acceptable to all parties, according to EPA spokesman Jim Murphy.

Though the EPA's cleanup plan was largely upheld through a court review in Washington, the agency has agreed to give mediation a chance to gain traction, holding off on other enforcement decisions related to the "rest of river" cleanup project.

GE challenged the EPA's 2016 cleanup plan, which followed earlier efforts to remove PCBs from properties in Pittsfield.

When the Environmental Appeals Board ruled in January on the appeal, it let stand most elements of the agency's plan. But it asked the agency to review its finding that tainted soils and sediments removed from the river be taken to licensed disposal sites outside Massachusetts, a condition that added as much as \$250 million to the cleanup's cost. The full cost of the plan has been estimated at \$613 million.

The EPA is not obligated to change its position on out-of-state shipments of PCB. Still, GE could press a case in other court action for in-state burial. The fate of PCBs removed from the river is expected to be a key topic in mediation.

Frustration over legal delays

Several participants at Wednesday's council meeting questioned the value of the private talks, characterizing them as a pointless repetition of attempts taken when GE and governments reached their initial accord at the turn of the last century over how the river cleanup would progress.

Barbara Cianfarini of Pittsfield, co-founder of Citizens for PCB Removal, bemoaned delays in getting work done.

"It just seems like a never-ending circle, chasing our tails," she said. Legal delays, environmentalists have noted, leave the toxins in place.

Tim Gray of Lee, executive director of the Housatonic River Initiative, said his group is participating in the mediation, led by John Bickerman, a Washington attorney, only to preserve its legal standing in the case.

"We are not happy with it," Gray said of mediation, calling it a mirror of old efforts. "Here we are years later, saying the same things that we said in 2000. This whole mediation, even after the first meeting, stinks. We're very pessimistic about it."

He questioned the secrecy of the process, which he said shuts out parties that did not file a legal brief in the GE appeal. One other group, Massachusetts Audubon, was allowed to join the mediation because of its land holdings in the affected area, Murphy said.

"That basically doesn't allow the public to participate," Gray said.

Reed Anderson, a Housatonic artist who sits on the council, said people who live along the river and will be affected by the cleanup face "closed doors" on what will happen.

"You're mediating our livelihood in southern Berkshire County," Anderson told Conway and other representatives of the EPA gathered in a meeting room at the Lenox Library.

"It is we who are most affected by what is going on here," he said. "Short-term gains are not what we are looking for."

Anderson said he attended a recent Select Board meeting in Great Barrington and came away thinking officials were eager to have a public meeting scheduled.

Jane Winn of Pittsfield, executive director of the Berkshire Environmental Action Team, pressed Conway on the date of a public forum.

"It's on us to figure out the timing for something more public," Conway said. He accepted a call to have that date identified within 10 days.

Conway defended choices made about the roster of groups represented in the mediation. Should participants include all stakeholders, he asked, or what he termed a more manageable group that can reach a decision?

"We had to draw the line somewhere to allow for efficiency in the negotiations," Conway said. "It wouldn't be successful in using everybody's time. We thought it was a fair balance."

Mediation participants include the EPA, GE, the five towns south of Pittsfield with land along the river and environmental groups.

The state Department of Environmental Protection decided not to participate.